

Technology Transfer

Legislation

The Civil Code of which the former was passed by the National Assembly on 14 June 2005 and replaced by the new one dated 24 November 2015 is now the principal legal basis for technology transfer activities in Vietnam. Guiding the Civil Code, on the technology transfer, are now Law on Transfer of Technology passed by the National Assembly on 29 November 2006, and its implementing Decree No.133/2008/ND-CP issued by the Government, on 31 December 2008, as amended and supplemented by Decree No.103/2011/ND-CP dated 15 November 2011 (“Decree 133”) and Decree No.120/2014/ND-CP dated 17 December 2014 (“Decree 120”).

Scope of Technology Transfer

The scope of technology transfer is quite broad. Technology to be the transfer must not fall within the lists technologies of which transfer is restricted or prohibited as stipulated in Appendices 2 and 3 of Decree 120. Technology objects which shall be eligible for transfer shall be a part or the whole of the following technologies:

- (i) Technical know-how;
- (ii) Technical information about technology shall be permitted to be transferred in the form of the technological plans, technological processes, technical solutions, formulae, technical specifications, drawings, technical maps, computer programs and information files;
- (iii) Solutions for production optimization and for renovation of technology; and
- (iv) Franchising.

Technology objects shall permitted to be transferred whether attached or unattached to industrial property objects.

Contents of the Contract

Parties entering into a technology transfer contract may reach

agreement on inclusion of the following particulars:

- (i) Name of the technology transfer contract, clearly stating the name of the transferred technology;
- (ii) The technology object which is being transferred and the products created from the technology;
- (iii) Transfer of the ownership of and/or right to use the technology;
- (iv) Method of transfer of the technology;
- (v) Rights and obligations of the parties;
- (vi) Price and mode of payment;
- (vii) Date of effectiveness and term of validity of the contract;
- (viii) Definitions of terms and concepts (if any) used in the contract;
- (ix) Plan and schedule for transfer of the technology, and location for implementing the transfer of the technology;
- (x) Liability to provide a warranty for the transferred technology;
- (xi) Penalties for breach of contract;
- (xii) Liability for breach of contract;
- (xiii) Applicable law for dispute resolution;
- (xiv) Tribunal for dispute resolution; and
- (xv) Other agreements, on condition that they are not contrary to the law of Vietnam. It is required that a technology transfer contract must be in writing or some other written form with equivalent validity such as a telegram, telex, facsimile or data message or other form as stipulated by law. The contract language shall be as agreed by the parties, but in the case of a transaction in Vietnam there must be a contract in Vietnamese. The Vietnamese and the foreign language versions of a contract shall be of equal validity. Compared with the old regulations, the new regulations on technology transfer are more open and respect the business intention of the parties, by removing a number of contractual restrictions and prohibitions in a technology transfer contract, relating to the price, the supplies, term of validity, etc.

Registration and Timing

Compared to the old regulations, the existing regulations permit the parties to a technology transfer contract to

register at their own discretion only for obtaining incentives under applicable laws instead of required registration as in the past.

According to Decree 133, the competent levels of certifying the registration of technology transfer contracts, are:

- (i) At the central level, the MOST shall issue technology transfer contract registration certificates for technologies of investment projects in which investment is approved by the Prime Minister. One copy of a technology transfer contract registration certificate shall be sent to the DOST in the locality where the transferee is headquartered for coordinated monitoring and inspection of contract performance; and
- (ii) At the local level, the DOST shall issue technology transfer contract registration certificates for technologies other than those specified above. One copy of a technology transfer contract registration certificate shall be sent to the MOST for management.

It is required that the technology transfer contracts must be registered within 90 days from the signing date. And as a routine, and subject to the satisfaction of the registration file, the contract registration certificate shall be issued within 15 days from the receipt of the satisfactory file.

A file for registration of technology transfer contract must include the following:

- (i) Registration letter;
- (ii) The original or a certified copy of the technology transfer contract in Vietnamese and a foreign language. In case the parties to technology transfer are Vietnamese organizations or individuals, technology transfer contracts may be in Vietnamese only. The contract must be signed and sealed by the contracting parties and must be initialed and sealed by the contracting parties on every two adjoining pages and annexes in case a contracting party is an organization.

Taxation

Taxes applicable to transferors are well described in [Section 16](#) hereunder.